

cites for the opposite proposition.²⁶ Take, for example, the first paragraph in the first letter in Time Warner's stack:

As you know, Southwestern Bell Telephone Company (SWBT) filed its original September 1, 1994 interstate virtual collocation tariff utilizing the equipment prices negotiated between vendors and SWBT as the basis for the tariffed rates submitted in that filing. SWBT continues to make every effort to protect against disclosure of these negotiated prices, although it is very uncertain whether these efforts will be successful. (emphasis added)

The other letters repeat that language. Since this investigation is about those September 1, 1994, tariffs, SWBT's interstate IDE rates reflect those negotiated prices with one exception.²⁷ Why Time Warner asserts the opposite to the Commission is not at all clear and seems to be without any possible justification.

Not only is the truth of the matter reflected in those letters, one of the people specifically listed as preparing Time Warner's opposition knows it. A little background is necessary. The use of list or negotiated prices became an issue with SWBT's Texas intrastate virtual collocation tariffs because SWBT had based those IDE tariffs on list prices. As an intervenor in that Texas proceeding, AT&T Communications of the Southwest, Inc. ("ATTC SW") sought justification for that difference in its Information Request No. 1.2(b), which asked:

With regard to your response to General Counsel's Request for Information 2-13, please answer the following:

²⁶ Time Warner, Appendix B.

²⁷ Since a negotiated price did not exist for Alcatel IDE, rates for that IDE are based on list price. To date, no interconnector has ordered any Alcatel equipment.

- (b) Please explain why SWBT should be allowed to use costs developed for the intrastate jurisdiction using vendor nonproprietary data instead of the negotiated price of the equipment (as used with the FCC filing) for the intrastate direct cost. (emphasis added)

SWBT response dated May 4, 1995, including a recitation of that Request, is attached hereto as Attachment 1.

As is evident from the question, SWBT had previously acknowledged to the Staff of the Texas Public Utility Commission that interstate rates reflected negotiated IDE costs, but its intrastate rates did not. ATTCSW was aware of that earlier SWBT response because, pursuant to Texas Commission rules, answers to such requests must be served on all parties to the proceeding. Accordingly, as an admitted party to that proceeding, Time Warner received that SWBT May 4, 1995, response to ATTCSW, as well as SWBT's earlier response to General Counsel.

Knowledge of SWBT's response to that Information Request was affirmatively demonstrated by Time Warner in that Texas proceeding. On June 30, 1995, Time Warner pre-filed in the proceeding the Supplemental Direct Testimony of Don J. Wood, an economic consultant. Listed on the cover sheet and signature page of Time Warner's opposition in this proceeding is Don Wood, an economic consultant having the same address. In that pre-Testimony, Mr. Wood quoted (page 26) and cited (page 26, footnote 23) SWBT's response to ATTCSW. Copies of the relevant pages of that Testimony are attached for the Commission's review as Attachment 2. There is no possible explanation

for Time Warner's posture before the Commission on this issue, and its actions call into question Time Warner's general credibility before the Commission.

However, by way of further explanation, the letters comprising Time Warner's Attachment B were sent in anticipation of a Texas virtual collocation proceeding, and sought a definitive response on whether IDE vendors were going to charge SWBT their "list" prices for equipment that would be used for virtual collocation arrangements due to confidentiality concerns in Texas. In preparing rates for Texas, SWBT sought to propose rates that would recover its IDE provisioning costs just as it seeks to do so for interstate virtual collocation. In light of uncertainty over whether SWBT would be charged list or negotiated prices (and which to base its intrastate Texas rates on) as well as to ensure that vendors understood the likelihood of price disclosure, the letters in Attachment B were sent. The desire to eliminate confusion and to elicit final vendor decisions is clear from the Attachment B letters, as stated in the last paragraph:

Please contact the undersigned in writing by May 11 if [the addressee vendor] intends to charge SWBT negotiated prices or "list" prices for virtual collocation equipment sold to it on a going forward basis.

SWBT did not advocate to any vendor what price it should charge; SWBT is indifferent so long as it recovers its costs.²⁸

²⁸ The fact that, as reflected on Time Warner's Attachment C, a vendor may indicate that SWBT will be charged list prices on equipment for virtual collocation arrangements and direct SWBT accordingly does not reflect on SWBT, just on the competitive sensitivity of negotiated prices and the vendor's justifiable concern over the ability to protect before regulatory bodies that data from other purchasers of that vendor's equipment. In any event, (continued...)

Notwithstanding the pages Time Warner devotes to this non-issue, SWBT's best negotiated prices were used in SWBT's interstate IDE tariffs, and such negotiated prices will continue to be used so long as the vendor does not charge SWBT list for equipment to be used as IDE. In any event, as explained elsewhere in this Rebuttal, SWBT is willing to buy IDE from interconnectors for \$1, obviating any concern Time Warner may have over IDE vendor prices.

For the above reasons, Time Warner's analysis regarding SWBT's maintenance costs and rates is fatally flawed.²⁹ SWBT did not apply an Annual Cost Factor to the list price of equipment to develop maintenance costs for either DS1/DS3 services, or for IDE. As has been stated, the use of ACFs was consistent, and applied to actual vendor prices in both cases. Thus, Time Warner's complaint regarding SWBT's maintenance costs is baseless, as well as its complaint about SWBT's power costs.³⁰ Given that Time Warner proceeds with assumptions it knows are wrong, it should not be surprising that its purported analysis is worthless.³¹

²⁸(...continued)
SWBT's interstate rates do not reflect list prices.

²⁹ Time Warner at 27-29.

³⁰ Time Warner at 34.

³¹ For the same reason, Time Warner's alleged compounding effect obviously does not exist. Time Warner at 29 n.37.

VIII. NONRECURRING CHARGES FOR INTERCONNECTOR-DESIGNATED EQUIPMENT ARE DEMONSTRABLY JUST AND REASONABLE

Unsurprisingly, those filing oppositions continue to claim that SWBT's nonrecurring rate structure is unreasonable. Those claims are made using pejorative terms and phrases such as "extortion" and "barrier to competitive entry." Labeling and name calling is not, however, a substitute for reasoned analysis. Under the circumstances, a nonrecurring rate structure for IDE is just and reasonable.

MFS in essence argues that the LECs should be required to finance the purchase of competitor's equipment if the LEC is willing to offer services to retail customers at rates which recover shared network infrastructure costs.³² SWBT has demonstrated repeatedly that IDE is not equivalent to discretionary additions to LEC infrastructure. IDE is purchased at the demand of, and for the exclusive use of, a specific interconnector, at the time of that interconnector's choosing and in a form and design which is entirely at the interconnector's discretion. None of these characteristics are shared with equipment which would be purchased by the LEC for its own use, except by sheer coincidence. Interconnectors are just attempting to have SWBT subject to a fundamental business risk that should properly be borne by them. Having a party bear the risk of its own business decisions is not anticompetitive, it's simply part of the price of competing.

As SWBT has previously stated ad nauseam, interconnectors compete with the SWBT DS1/DS3 services and SWBT has no interest in financing its competitors. Just as

³² MFS at 8.

in any business, competitors should be required to obtain their own financing, debt or equity, on the terms and conditions it can procure. Such a requirement simply does not disadvantage interconnectors; it merely requires them to compete on their own merits, including creditworthiness.

Those competitors should also be required to use their own capital budgets. If a recurring rate structure were used, IDE would be capitalized and thus subtracted from the capital available for discretionary projects by SWBT. KC Fibernet's claim that "[i]t is incorrect to state that SWBT's ability to obtain capital is fixed or finite" is so outrageous that SWBT almost believes it must be a typo.³³ The Commission should not be confused -- SWBT does NOT have unlimited capital, does NOT have an unlimited ability to borrow money, and does NOT have an unlimited ability to acquire equity. Like any other business, capital is limited and business decisions are made every day on how capital is to be used. Once determinations are made on the non-discretionary capital requirements (in SWBT's case this includes the capital necessary to meet its LEC obligations), the remaining capital is spent based upon whether a proposed capital outlay will generate an expected return that exceeds SWBT's cost of capital. Using a recurring rate structure would insert SWBT's competitors' capital needs into this financial process ahead of SWBT's discretionary projects given the current requirement to provide virtual collocation. Further, given the clear inability of SWBT to forecast its competitors'

³³ KC Fibernet at 9, 10.

capital needs or even those competitors' ability to forecast their own,³⁴ the amount of that capital would become an unknown in SWBT's budgeting process thereby limiting SWBT's ability to plan. Such a result is especially unreasonable in that, under the overhead factor mandated by the Phase I Order, SWBT is denied a reasonable return on IDE-related investment.³⁵

Notwithstanding KC Fibernet's assertion to the contrary,³⁶ there is nothing specious about the reality of capital budgeting or the fact that using SWBT's capital to finance its competitors only limits SWBT's ability to upgrade its own network in order to compete more effectively with those very same interconnectors. KC Fibernet is correct in one limited and twisted sense, though. By arguing for a recurring rate for IDE, the interconnectors and SWBT are indeed not "pitted against the public for a share of scarce resources."³⁷ Instead, the fight is over the capital that SWBT has already raised from the public. Since KC Fibernet states that "if a reasonable return can be earned, the capital

³⁴ MFS at 15.

³⁵ When SWBT invests capital to provide high-capacity service, the investment is used to provide all components (i.e., rate elements) of high-capacity service. SWBT's return is based upon total service, not on a single rate element used to provide any high-capacity service. Since the overhead permitted by the Commission is the lowest overhead reflected in a single element, the return on interconnection in total for all interconnection elements falls significantly short of the return realized from SWBT's high-capacity services.

³⁶ KC Fibernet at 9.

³⁷ KC Fibernet at 10. In a non-twisted, rational sense, KC Fibernet is just plain wrong. All businesses compete with all other businesses for capital, not just those in the same industry.

can be found”,³⁸ the Commission should require KC Fibernet and all interconnectors to do the finding somewhere other than within SWBT’s budget.

Attempts by interconnectors to “poor mouth” this fundamental fact of business and competition into a barrier to entry is just silly. Interconnectors already finance a transaction that is the economic equivalent of SWBT’s nonrecurring charge -- the purchase of basic transmission equipment and other necessary ancillary equipment -- whenever they provide a fiber-based service where they own the basic transmission equipment on both ends of the fiber (i.e., total end-to-end special access/private line service, physical collocation arrangements). With a virtual collocation arrangement, the interconnector must purchase and connect the equipment identical to the IDE on the end of the fiber connected to the IDE to make the arrangement work. SWBT’s nonrecurring rate structure places the interconnector in a similar economic position that it would have otherwise been with other technically equivalent arrangements.

Nowhere is that desire to have SWBT bear the risk of an interconnector’s business decisions better revealed than by MCI. MCI complains that interconnectors might perceive it necessary to purchase more expensive equipment with unnecessary capacity because they know if they want to expand at a later date they will lose their initial investment. Accepting that questionable premise for the sake of argument,³⁹ the

³⁸ KC Fibernet at 9.

³⁹ Subject to its appeal, SWBT is obligated to continue to provide a virtual collocation
(continued...)

conclusion that the Commission must be compelled to reach is that MCI wants SWBT to accept the risk of the interconnector's decisions. An interconnector is free to select IDE with any capacity that interconnector believes it needs; SWBT has no input into that decision. Accordingly, the interconnector should rightfully bear the risk that its own forecast is accurate, not SWBT. The nonrecurring rate structure ensures that SWBT recovers the cost of the IDE selected by the interconnector, with SWBT's shareholders and customers not being placed at risk for an interconnector's competitive decisions.

In this regard and as noted earlier, MFS already admits to making bad business decisions based upon inaccurate sales forecasts⁴⁰ but nonetheless strives mightily to blame SWBT for those decisions. The irony of MFS blaming SWBT for MFS' unforeseen success in the marketplace should not be lost on the Commission. Notwithstanding that success, SWBT's nonrecurring IDE rate structure is somehow blameworthy. SWBT misses the connection. Instead, all MFS' bad forecasts have done is placed strains on SWBT's ability to perform work for its competitor as capacity-adding virtual collocation arrangements for MFS are expedited by SWBT personnel.

³⁹(...continued)
arrangements. Simply because one arrangement has reached its capacity and another must be ordered for additional capacity does not mean that the one arrangement will be discontinued unless the interconnector makes that decision. SWBT has no ability to require that its use be halted. Again, the interconnector is in control and SWBT should not be castigated for an interconnector's business decisions.

⁴⁰ MFS at 15.

Placed in that proper perspective the interconnectors' demands are revealed to be an attempt to make virtual collocation so punitive in nature that SWBT finally accedes to physical collocation or at least the \$1 purchase/resale arrangement. SWBT has lawfully exercised its right to refuse to do either, and should not be punished for that exercise by having the Commission attempt to order SWBT to finance the expansion of its competitors into new markets. As before and otherwise, SWBT's competitors should compete and expand according to their own capabilities and skills, and not on SWBT's unwilling back through the use of its creditworthiness and capital budget.

Indeed, the \$1 purchase/resale mechanism lays bare the reality of the situation. The interconnectors argue for adoption of that mechanism at every opportunity⁴¹ (notwithstanding the Commission's earlier acknowledgment that it cannot force a LEC to enter into such an arrangement)⁴² yet under those mechanisms the interconnector must finance its purchase of the IDE. Apparently, if SWBT were willing to adopt that mechanism as other LECs have, then interconnectors are willing to finance the IDE. Faced with SWBT's refusal, however, the interconnectors scream "barrier to entry" in the hope that the Commission will be blind to the basic economic transaction that is occurring.

⁴¹ See, e.g., KC Fibernet at 7; Time Warner at 18-19, MFS at 13.

⁴² Virtual Collocation Order, para. 127.

Time Warner's desire to have the Commission mandate a recurring charge to recover IDE costs over the depreciable life of the IDE highlights the essence of the difference between IDE and SWBT's network equipment that is used to provide DS1/DS3 service -- IDE is used for as long as the interconnector wants it to be used. One month, one year, one decade -- SWBT has absolutely no control over the situation. Only the interconnector can make that decision, and only the interconnector can and should bear the risk that it can recover the cost of IDE through its customers. The concept of a depreciable life simply has no applicability when SWBT cannot determine how long the equipment is likely to be used and, eventually, when to retire it regardless of whether it is standard or non-standard. Correspondingly, Time Warner's suggestion of four years⁴³ is just a number picked out of the air with the hope that an air of reasonableness surrounds it.

Among the interconnectors, at least KC Fibernet begrudgingly appears to acknowledge that SWBT may have a point with regard to non-standard IDE.⁴⁴ SWBT clearly and absolutely has no use for non-standard IDE and cannot be placed at risk that it will not be able to recover the cost of equipment that is foreign to SWBT.

The continued attempts by the interconnectors to convince the Commission that they have some interest in the IDE is simply nonsense that does not become more

⁴³ Time Warner at 47, 48.

⁴⁴ KC Fibernet at 8.

convincing with its repetition. The interconnectors continually lose sight of the fact that the Commission has stated many times, including before the Court of Appeals, that the IDE⁴⁵ is owned by the LEC. As the United States Supreme Court has stated, utility customers do not obtain any equitable or legal right or interest in a utility's assets or equipment by paying tariffed rates.⁴⁶ Notwithstanding MFS, the interconnectors simply have no claim to any IDE beyond the requirement that SWBT use it to provide interconnection. For that reason, there is no need, as KC Fibernet insists,⁴⁷ for unique procedures to be developed to handle the disposal of SWBT's equipment that is used as IDE. As with all of its equipment, SWBT decides what to do with equipment used as IDE once it is no longer needed for that function.

For that same reason, Time Warner makes several claims regarding the re-usability of IDE that are based on unspecified and undefined SWBT ability to control the length of use of the IDE.⁴⁸ No where in the Virtual Collocation Order is SWBT given that ability, and SWBT does not presume it. For that reason among others, SWBT has no ability to make any assumption regarding its re-usability, and cannot but assume that it will have no

⁴⁵ See "Brief for Respondent" in No. 94-1547 (and consolidated cases), filed September 15, 1995.

⁴⁶ See Board of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23, 46 S.Ct. 363, 366, 70 L.Ed. 808 (1926).

⁴⁷ KC Fibernet at 9.

⁴⁸ See, e.g., Time Warner at 42 ("Such a scenario create incentives for SWBT to seek early termination of an interconnector's [virtual collocation arrangement]"); at 42 (Time Warner wants to use "that [IDE] equipment for its entire useful life").

use for any IDE, standard or otherwise, at whatever unknown and unknowable date that the interconnector no longer wishes to use it for virtual collocation purposes.

Time Warner also attempts to use information from SWBT's Texas intrastate virtual collocation proceeding to raise suspicions about SWBT's ability to re-use at least some AT&T, Fujitsu, and Alcatel IDE. Rather than again demonstrating Time Warner's inaccuracy, SWBT attaches the Rebuttal Testimony of William C. Deere from that proceeding that addresses the fallacious nature of Time Warner's attempt. See Attachment 3.

Although irrelevant to the issue, the claim by MFS and KC Fibernet that SWBT is unjustly enriched and the recipient of a windfall is plainly wrong due to the several assumptions that are inherent in the claim.⁴⁹ For example, the claim assumes that the equipment has some value at the point in time when the interconnector discontinues the virtual collocation arrangement. The IDE may be used in that arrangement for years, at which time it may be wholly obsolete. Given the rapidity of technical change in the telecommunications industry, it may not take years before the IDE is useless. Also, it assumes SWBT would have some use for the IDE. In addition to the obsolescence issue, IDE that is non-standard to SWBT will have no use whatsoever. Even if the IDE is the same type that SWBT uses as standard, SWBT may have no need for the IDE at the time that the interconnector chooses to discontinue the virtual collocation arrangement due to

⁴⁹ MFS at 14, 15; KC Fibernet at 9.

the IDE being outdated or obsolete, or for lack of any need for the IDE. Further, even if SWBT has no use for it but the IDE retains some value as scrap, that value may be eclipsed by the costs (including environmental) of its removal and disposal (which costs were not included in development of the nonrecurring IDE rate). For all of those reasons and fundamentally because it is the interconnector and not SWBT that determines when the IDE will no longer be used, SWBT cannot even begin to estimate any value at the end of the arrangement. Accordingly, SWBT reasonably assumes that IDE will have no value, either positive or negative, at the end of any virtual collocation arrangement. Correspondingly, KC Fibernet's apparent assumption that IDE will always have "value" no matter when its use is discontinued and no matter the cost of removal and disposal simply cannot be supported.⁵⁰

Finally, MFS cites a Texas stipulation and requests that the Commission require the adoption of a similar structure for SWBT's interstate rates. The Commission should be aware that the MFS also signed that Texas stipulation, which contains the following provision:

This Stipulation and Agreement represents a negotiated settlement of the matters at issue only in this Compliance Tariff Application proceeding. The Stipulating Parties agree that this Stipulation and Agreement shall not be asserted by any party hereto as an admission or waiver or precedent in connection with any other proceeding before the [Texas Public Utility Commission], the [Federal Communications Commission], any other regulatory body, any state or federal court, or any other forum, other than in a proceeding to enforce the terms of this Stipulation and Agreement. It is

⁵⁰ KC Fibernet at 9.

further agreed that the Stipulating Parties, and each of them, reserve their rights to advance different or contrary positions in any other proceeding and in any forum, and that none of the Stipulating Parties shall be deemed to have approved or acquiesced in any particular rate design, cost study methodology, or ratemaking approach or methodology.

Time Warner also cites that stipulation although somewhat more obliquely.⁵¹ In contrast, SWBT meant what it signed, and thus intends to abide by the terms of that stipulation and not cite other provisions to contest various positions taken by MFS, Time Warner, or others that were also in that Texas proceeding.

However, solely due to a need to correct MFS' misrepresentation of that stipulation, SWBT feels compelled to note that SWBT's agreement to finance Texas intrastate IDE did not result in a recurring rate structure. Instead, it is simply and clearly an installment purchase arrangement at an interest rate defined by a Texas statute and with a term selected by the interconnector wanting SWBT financing among various term options. Due to the fundamental nature of the relationship, the interconnector is required to pay for the IDE in an installment method, with balance due upon termination of the virtual collocation arrangement. SWBT has no intention of offering that financing arrangement in any other jurisdiction.

⁵¹ Time Warner at 40 n.55.

IX. SWBT IS INDEED WILLING TO PURCHASE IDE FROM INTERCONNECTORS

MFS, Time Warner, and KC Fibernet each complain that SWBT refuses to purchase equipment to be used as IDE from interconnectors. That is simply untrue, as clearly stated in SWBT's Direct Case. SWBT is willing to purchase IDE from any interconnector at any price established by the interconnector, including \$1. However, since the equipment sold by the interconnector will be placed into SWBT's network, that equipment will be subject to the same requirements as any other equipment purchased for SWBT services or for use as IDE for a virtual collocation arrangement. Given the obligations imposed by the Virtual Collocation Order, SWBT cannot and is not willing to vary its purchasing standards based upon who is the vendor of IDE. Thus, so long as the equipment is new in the packaging (or meets SWBT standards for used equipment) and the interconnector-acting-as-vendor is willing to enter into a purchase agreement containing terms and conditions substantially similar to those SWBT demands of any vendor,⁵² SWBT is willing to purchase the equipment to be used as IDE from an interconnector.

However, as also noted in its Direct Case, the nonrecurring charge to the interconnector will be comprised of the sales price established by the interconnector-acting-as-vendor plus overhead and charges to recover still-existing nonrecurring direct

⁵² The IDE manufacturer/vendor will also need to be a party to such an arrangement in order to ensure SWBT can meet its obligations with respect to any IDE (e.g., training, software updates).

costs, the total of which would not exceed the overhead and direct cost amounts embedded in SWBT's equivalent nonrecurring rates when SWBT procures the IDE directly from the manufacturer/vendor. Those direct costs do not disappear simply because the interconnector sells SWBT the equipment to be used as IDE, and the minimal overhead amount permitted by the Commission is still needed to contribute to SWBT's joint and common costs. Interconnectors will still be required to pay those amounts regardless of the arbitrary price set by an interconnector.⁵³ However, so long as the interconnector meets those vendor/equipment requirements and SWBT is able to recover its costs and whatever overhead is allowed, SWBT is indifferent to the source of the equipment used as IDE. And if, as is always alleged by interconnectors, SWBT is wrongfully found to have overstated its cost of equipment, the interconnector will save money in the process.

SWBT does not understand how KC Fibernet can assert that this rate structure somehow discriminates among interconnectors that decide to become the vendor of IDE.⁵⁴ As with any other interconnector that wants to sell SWBT equipment to be used as IDE, KC Fibernet would set its own price for the equipment. SWBT will, in turn, charge KC Fibernet that price plus the other charges identified above. The only possible differences between interconnector charges with such a structure are dictated by the

⁵³ Among others, Time Warner appears to believe that SWBT should not be able to recover those amounts when a \$1 purchase is used. See Time Warner at 41.

⁵⁴ KC Fibernet at 4.

interconnector itself when it sets the equipment price to SWBT. If the equipment manufacturers charge different interconnectors different amounts, that concern is hardly SWBT's or the Commission's. Those differences are simply outside of the Communications Act and SWBT cannot be used to equalize its competitors' costs.

Finally, ALTS is a little behind the times. Although the language quoted by ALTS on its page 14 is admittedly accurate, the language is from SWBT's initial D&J. That provision was superseded more than 10 months ago when SWBT filed Transmittal No. 2410 on December 13, 1994, which deleted that language. Especially in light of the fact that no interconnector has sold any IDE to SWBT, the issue is moot.

X. SWBT FULFILLS ITS OBLIGATION TO ACCEPT IDE SPECIFIED BY INTERCONNECTORS

More than one opposition objects to SWBT's tariff language that states that IDE is limited to that equipment necessary to "provide the interconnector's requested functionality or necessary technical compatibility with the interconnector's equipment." However, in each case the objection attempts to create an issue that does not exist. Instead, the interconnectors do not wish to acknowledge what equipment can fall within the category of "IDE."

As SWBT has explained, “IDE” is that equipment “reasonably specified by the interconnector”⁵⁵ in order to ensure functional compatibility,⁵⁶ and to ensure that interconnectors would be able to obtain all desired functionalities from the virtual collocation arrangement.⁵⁷ IDE is thereby limited to basic transmission equipment and the other manufacturer-specific electronic equipment necessary to provide the requested virtual collocation arrangement. For this reason and as specified by potential interconnectors themselves, SWBT tariffed 123 rate elements for 20 different types of IDE. Moreover, SWBT understands its obligation to provide other non-tariffed IDE upon request. SWBT is thus demonstrably not attempting to limit any interconnector’s choice of IDE.

However, what is not reasonably included within IDE are equipment and parts that are not required by compatibility needs. Falling outside of the concept of IDE are such items as fiber optic cable, power equipment, electrical multiplexers, equipment racks, the type of nuts and bolts used in those racks, and the like. Under the Virtual Collocation Order, an interconnector does not have the authority, and does not require the ability, to specify SWBT network equipment in such detail. SWBT maintains at least that much control over its own network. The attempts by interconnectors to convince the

⁵⁵ Virtual Collocation Order, at para. 44 (emphasis added).

⁵⁶ Id. at para. 49.

⁵⁷ Id. at para. 57.

Commission to give them carte blanche to specify whatever they may by whim or desire are inconsistent with that Order and clearly overreaching.

XI. SOUTHWESTERN BELL RECOVERS FLOOR SPACE AS A DIRECT COST, NOT AN OVERHEAD

MCI is heard to complain that there is double recovery for floor space in that those costs are recovered in both overhead and with a direct cost assignment.⁵⁸ The assertion is empty, without any support whatsoever. In fact, had MCI actually read SWBT's Direct Case, the assertion would not have been made against SWBT. As has already been explained in its Direct Case, SWBT calculates and includes direct building costs for any rate element that uses central office equipment. These rate elements include those for DS1 and DS3 services as well as those for virtual collocation IDE rate elements. Since building costs have been included in both the direct costs for what the Commission has designated to be "comparable services" and for virtual collocation rate elements, the application of the "comparable services" overhead to virtual collocation elements cannot logically result in building costs being included in the overhead. Correspondingly, as there is no distinct recovery for SWBT's land investment in DS1 or DS3 rates, no distinct recovery was included in SWBT's virtual collocation rates. MCI's suggestion that LECs should not be allowed to recover building costs is tantamount to suggesting that since MCI already owns a long distance network, making a call over that existing network

⁵⁸ MCI at 13.

should be free. If the Commission finds merit in MCI's position, SWBT would be willing to step forward with a petition to this effect for MCI's interexchange service.

XII. MCI'S MISREPRESENTATION ON THE COST OF MONEY

SWBT feels compelled to respond to MCI on its criticism of BellSouth's use of the cost of money. MCI asserts that the TRP Order "clearly stated that 11.25 percent was the discount rate that all LECs should use to determine their virtual collocation rates."⁵⁹ Allow SWBT to quote the TRP Order at paragraph 16, the very paragraph that MCI claims as support for its novel interpretation:

To calculate the price-out, LECs should assume that nonrecurring costs will be amortized over a 5-year period at an 11.25 percent discount rate.

Although one would think emphasis need not be added in order to read that plain, simple sentence, SWBT has done so in order that MCI might see that the 11.25 percent was specified to be used only for the price-out, not for use as a LEC's cost of money. Indeed, if the Commission had attempted to mandate a cost of money, the Commission's Virtual Collocation Order would have been violated as a denial of the costs of providing virtual collocation arrangements.⁶⁰ In light of such an egregious misstatement of a easily refutable assertion, SWBT wonders why MCI continues to enjoy such an apparent high level of credibility with the Commission.

⁵⁹ MCI at 12.

⁶⁰ For that reason, SWBT will not waste the Commission's time refuting MCI's lame attempts to justify the use of a non-compensatory cost of money. SWBT also suspects that the Commission can just as easily see that MCI's arguments are specious and fallacious.

XIII. VOLUME AND TERM DISCOUNTS ARE NOT APPROPRIATE FOR VIRTUAL COLLOCATION ARRANGEMENTS

MFS continues to direct the Commission to require the LECs to establish volume and term discounted rate structures for virtual collocation. MFS' attempt is unsupportable and should be disregarded for several reasons. First, collocation equipment is dedicated for the sole use of the interconnector. Individual costs are prepared for each equipment type (possibly each interconnector) and individual equipment rates developed. As such, any volume and term discounts are already included in the interconnector's rates. This is especially true since all virtual interconnection rate elements except the cross-connects are available only in volume. For example, a DS1 term card provides a minimum of four units of service even though SWBT's overhead, as ordered by the Commission, is based on a single unit of service. With regard to cross-connects, no volume cost savings are realized since these connections involve electrical intra-office connections and thus no volume discounts are appropriate.

In addition, the Commission has prescribed overhead loadings that are already unreasonably low. To be required to offer volume or term discounts below that amount would be even more unreasonable. Interconnectors such as MFS supported the decision to limit LEC overhead to the lowest contribution percentage on any single DS1 or DS3 rate element, and have indicated that they want further discounts. In essence, they argue for preferential treatment over any SWBT customer with term and volume discounted DS1 or DS3 services. Interconnectors are insisting on a double discount -- a further

discount in addition to the discount already given by the use of the lowest overhead loading factor derived from a single rate element of a discounted high capacity service. While SWBT might be willing to consider offering whatever volume and term discounts are possible if those rates were allowed the same contribution that it is generally generated by DS1/DS3 services with term and volume discounts, the same interconnectors that argue for those discounts revealed that they truly have no interest in being treated like DS1/DS3 customers when they opposed Bell Atlantic's attempt to tariff volume and term discounts.

XIV. SWBT'S REQUIREMENT THAT INTERCONNECTORS PAY ESTIMATED NONRECURRING CHARGES BEFORE TURNING UP VIRTUAL COLLOCATION ARRANGEMENTS IS REASONABLE

There are various arguments about SWBT's requirement that an interconnector pay the nonrecurring charges associated with a virtual collocation order before completing the cross-connect for that arrangement. These arguments again fail to recognize the fundamental nature of virtual collocation arrangements - each virtual collocation arrangement is unique, with the interconnector dictating the specifics and equipment that will be used in the interconnection. But for that specific virtual collocation arrangement order, SWBT would not perform the work and has no use for the IDE. This is true for both non-standard and SWBT-standard IDE.

For that reason, SWBT is unwilling to bear all of the risk that the nonrecurring costs associated with a virtual collocation arrangement will be recoverable. SWBT does bear some of that risk, however, in that only 50% of the estimated nonrecurring charges

are required with a virtual collocation order. Based upon that order and partial payment, SWBT incurs all of the nonrecurring costs of establishing the virtual collocation arrangement. Indeed, this is the same practice that SWBT used with physical collocation.

The requirement that the interconnectors pay the rest of the estimated charges is quite simply a reaction to the practices of two interconnectors in particular that were encountered by SWBT with physical collocation arrangements. In more than one instance, SWBT was paid the up-front 50% by an interconnector and, once the arrangement was ready, completed the cross-connect and allowed the interconnector full use of the arrangement. SWBT then billed the final nonrecurring charges less the 50% payment. However, notwithstanding using those arrangements and receiving their full benefit, the interconnectors refused to pay the remainder of the nonrecurring charges. In all, two interconnectors have more than \$300,000 in outstanding charges that they continue to refuse to pay.⁶¹

Following the old saying that “fool me once, shame on you; fool me twice, shame on me,” SWBT included the tariff requirement that the remaining 50% of the estimated nonrecurring charges be paid before the virtual collocation cross-connect is established. There is absolutely nothing unreasonable about SWBT refusing to finance its competitors, nor unreasonably discriminatory about having a practice to address a

⁶¹ Because of the still-open investigation of SWBT’s physical collocation tariffs and a Commission order, SWBT has believed it does not have an ability to pursue available remedies to attempt collection of that amount.

specific situation. Each business modifies its payment practices when they prove ineffective; SWBT has done no different.

MFS' claims that this practice causes "significant delay" and increases "transaction costs" is apparently based on the fact that MFS' bill payment practices are not structured to accommodate this payment practice.⁶² While doubting the existence or materiality of any such delays or costs (which, to the extent they actually exist, could be eliminated by planning on the part of MFS), MFS' claim is amusing in light of the many business practices that SWBT has been forced to modify and to institute in order to accommodate collocation. Indeed, those SWBT changes continue nearly daily as SWBT is forced to respond to the bad planning and order inaccuracies of interconnectors such as MFS. The costs associated with those changes are of course unrecovered.

Finally, the Commission should ignore MFS' completely bald assertion that even when SWBT gets paid, "MFS experiences a significant delay in the provisioning of its interconnection requests."⁶³ Like many other MFS statements, this one is untrue as well. Once the payment for the remaining 50% is received, SWBT can process the order for the cross connect even if payment arrives the same day. There is no delay so long as MFS complies with the tariff; it is only a lack of planning on MFS' part that causes any delay.

⁶² MFS at 20, 21.

⁶³ MFS at 21.